IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5062 OF 2007

Smt.Sudershan Kedarnath Sethi & Anr. : Petitioners

V/s.

M/s.I.G.E. (India) Ltd. & Ors. : Respondents

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Mr.A.V.Anturkar with Mr.Chandrakant N. Chavan and Mr.N.R. Patel for the petitioners.

Mr.Aditya Khanna i/b. M/s.Khaitan & Co., for respondent no.1.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 24, 2007.

P.C.

1. Rule, returnable forthwith.

Mr.Khanna waives service for the respondent no.1.

Heard by consent.

2. The petitioners, who are landlords, have questioned the grant of stay granted by the appellate Court to the order passed by the trial Court. At the petitioners' instance, the trial Court passed an order directing: (a) the appointment of a Commissioner; (b) restraining the respondents from creating a sub-tenancy. The appellate

Court has stayed that order. After hearing the matter for sometime, it seems that there was no reason for the appellate Court to stay the appointment of the Commissioner. Hence, the appointment of the Commissioner seems necessary in the circumstances of the case for elucidating the controversy in the matter. Hence, the Commissioner shall execute the commission as directed.

3. Mr.Anturkar, the learned counsel for the petitioners, does not press any challenge to the stay of the injunction against subletting. Hence, there shall be no injunction restraining the respondents from subletting, in accordance with clause 4 of the Consent Terms dated 8.11.1993 in R.A.E. Suit no.265/579 of 1992. Clause 4 reads thus:-

> "4. The landladies hereby permit IGE to grant sub-tenancy or leave and licence of part of whole of the said premises and/or admit any of the companies with which IGE is interested as sub-tenant of the said premises or any part thereof. IGE undertakes to be still liable for rents and other dues notwithstanding such sub-tenancy."

4. This would dispose of the interim order in question,

pending the appeal. The appeal shall be decided on merits not later than six months from the next date before the appellate Court. All contentions on merits for both the sides are left open. The rule is made absolute in the above terms.

S.A. BOBDE, J.